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STATUTORY INSTRUMENTS

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**2020 No. 103**

**The Victims' Payments Regulations 2020**

**PART 8**

Miscellaneous provisions

**Burden of proof**

44. The burden of proving any issue in relation to an application or appeal is on the applicant or, as the case may be, the appellant.

**Standard of proof**

45. The standard of proof applicable in any determination or other decision which is required to be made under these Regulations is the balance of probabilities.

**Time of applications and appeals**

46. For the purpose of these Regulations, the date on which an application or an appeal is made is the date on which the application is received by the Board.

**Withdrawal of applications and appeals**

47.—(1) An applicant or appellant may withdraw an application or appeal at any time before the applicant or appellant is notified of the determination of the application or appeal.

(2) An application or appeal is withdrawn by giving notice in writing to the Board.

(3) Where an application or appeal is withdrawn it may be reinstated by giving notice in writing to the Board.

**Applicants under 18**

48.—(1) An application may be made on behalf of a child by the child's parents or a person having legal responsibility for the child.

(2) Subject to paragraph (3), where a child is entitled to victims' payments, any payment is to be made to the child's parents or a person having legal responsibility for the child.

(3) Where paragraph (4) applies the Board may, in writing, appoint a person to—

(a) receive payments on behalf of the child, and

(b) apply the payments for the benefit of the child.

(4) This paragraph applies if the Board considers that it is in the interests of the child that a person other than the parent or person having legal responsibility for the child should receive payments on behalf of the child.

(5) Where a person appointed under paragraph (3) is a natural person, the person must be over the age of 18.

(6) The Board may, before appointing a person under paragraph (3), require that person to give such undertaking as the Board considers necessary as to the use of payments.

(7) Where the Board has made an appointment under paragraph (3)—

(a) the Board may at any time revoke it and either—

(i) make another appointment under paragraph (3), or

(ii) pay the child's payments to the parent or the person having legal responsibility for the child, and

(b) the person appointed may resign after having given one month's notice in writing to the Board of the intention to do so.

(8) In this regulation, a "child" means a person under the age of 18.

### **Duty to notify the Public Guardian**

**49.**—(1) Where a health care professional, after carrying out an assessment of a person, is satisfied—

(a) that the person lacks capacity in relation to a matter or matters relating to that person's care, treatment, personal welfare or property and affairs;

(b) that any of the powers of the court under section 113 of the Mental Capacity Act (Northern Ireland) 2016<sup>(1)</sup> ought to be exercised with respect of a relevant matter, and

(c) that arrangements in that behalf under section 113 of that Act have not been made and are not being made;

it is the duty of the health care professional to notify the Public Guardian of the situation.

(2) In this regulation—

"lacks capacity" has the meaning given by section 3 of the Mental Capacity Act (Northern Ireland) 2016;

"Public Guardian" has the meaning given by section 125 of that Act (the Public Guardian).

(3) Until section 128 of the Mental Capacity Act (Northern Ireland) 2016 (duty to notify the Public Guardian) is in force for all purposes, this regulation has effect as if for paragraphs (1) and (2) there were substituted—

"(1) Where a health care professional, after carrying out an assessment of a person, is satisfied—

(a) that the person by reason of mental disorder, of managing and administering their property and affairs;

(b) that any of the powers of the court under Article 98 or 99 of the Mental Health (Northern Ireland) Order 1986<sup>(2)</sup> ought to be exercised with respect to the property or affairs of that person;

(a) that arrangements in that behalf have not been made and are not being made,  
it is the duty of the health care professional to notify the Office of Care and Protection of those matters.

(2) In this regulation—

"mental disorder" has the meaning given in article 3 of the Mental Health (Northern Ireland) Order 1986;

<sup>(1)</sup> 2016 c. 18; section 113 is not yet in force.

<sup>(2)</sup> S.I. 1986 No. 595 (N.I. 4); article 99 was amended by sections 59(5) and 148(1) of, and paragraph 6 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

“Office of Care and Protection” means the Office of Care and Protection of the Supreme Court of Judicature of Northern Ireland.”.

### **Provision of advice**

- 50.** The Board must make arrangements for facilitating access to—
- (a) advice and support for any person making an application, or considering whether to make an application, under this Scheme, and
  - (b) advice on the financial management of payments for a person entitled to payments under this Scheme.

### **Expenses**

**51.** The Board may reimburse the expenses of travel, subsistence and accommodation reasonably incurred by a person in making an application or bringing an appeal under these Regulations.

### **Review of the Scheme**

**52.—**(1) The Secretary of State must, within the period of 12 months beginning with the end of the initial period, prepare a report on the operation of the Scheme.

(2) In paragraph (1), “the initial period” is the period of 2 years beginning with the first date on which applications may be made.

(3) In preparing the report under paragraph (1), the Secretary of State must, in particular, consult—

- (a) The President of the Board;
- (b) the Department and the Executive Office;
- (c) such persons representing the interests of those injured or killed as a result of Troubles-related incidents as the Secretary of State considers appropriate, and
- (d) such persons with experience and training regarding the medical assessment of disability as the Secretary of State considers appropriate.

(4) The Secretary of State must publish the report prepared under paragraph (1).

### **Consequential amendments**

**53.** Schedule 3 (which contains consequential amendments) has effect.